**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**



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| In the Matter of | |
| Access Charge Reform | CC Docket No. 96-262 |
| Price Cap Performance Review for Local Exchange Carriers | CC Docket No. 94-1 |
| Transport Rate Structure and Pricing | CC Docket No. 91-213 |
| Usage of the Public Switched Network by Information Service and Internet Access Providers | CC Docket No. 96-263 |

# COMMENTS OF CENTENNIAL CELLULAR CORPORATION

**CENTENNIAL CELLULAR CORPORATION**

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## COMMENTS OF CENTENNIAL CELLULAR CORPORATION

### 1. Introduction and Summary.

Centennial Cellular Corporation holds the "B" block PCS license in the Puerto Rico-U.S. Virgin Islands Major Trading Area. Centennial Cellular also owns Lambda Communications, Inc., a competitive local exchange carrier operating in Puerto Rico. Centennial and Lambda (collectively, "Centennial") have both invested heavily in the infrastructure needed to provide telecommunications service to residence and business customers in Puerto Rico. Centennial competes with the Puerto Rico Telephone Company ("PRTC"), the incumbent monopolist local exchange carrier ("LEC") in Puerto Rico, which is also an arm of the Puerto Rico government. PRTC operates landline and cellular networks throughout the Commonwealth, and offers both switched and dedicated access services for intra-island and interstate traffic.

Although Centennial may file more extensive reply comments, it limits its initial comments in this proceeding to two issues. First, in ¶¶ 50-53 of the *Notice*, the Commission suggests that it would be appropriate to apply most of the proposed access charge reforms —

including reforms designed to bring access charges more into line with economic cost — only to price cap incumbent LECs.[1] Centennial submits that the Commission should, at a minimum, apply all of its access reforms to all Tier 1 LECs, and perhaps more broadly to ***all*** incumbent LECs, subject to an appropriate waiver procedure, modeled on Section 251(f), to accommodate the special needs of small, rural incumbent LECs.

Second, in ¶¶ 278-80 of the *Notice,* the Commission raises the possibility that it might impose regulation on terminating access services offered by non-dominant, non-incumbent LECs.[2] In practical terms, however, new, competitive LECs are highly unlikely to seek to charge unreasonably high access charges to IXCs. The reason is that the new CLECs want IXCs to establish direct connections to the CLECs' switches in order to avoid sharing access charges with the ILECs. IXCs will only establish such connections, however, if the CLEC's access charges, including terminating access charges, are on balance no higher than (and, ideally, lower than) the ILEC's charges. The ILEC's regulated access charges, therefore, will act as a natural, market-based cap on the rates the CLECs can charge.

## 2. Access Charge Reform Should Not Be Limited To Price Cap LECs.

The *Notice* proposes to limit the most sweeping and important aspects of its access charge reform proposals to incumbent LECs who have elected price cap regulation. Centennial certainly agrees that all price cap incumbent LECs should be covered by the new access charge regime. In fact, however, the Commission should apply its revised access charge rules to all incumbent LECs, subject to an appropriate waiver procedure for small, rural LECs whose special

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[1] In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and Usage of the Public Switched Network by Information Service and Internet Access Providers *Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry*, CC Docket Nos. 96-262, 94-1, 91-213, and 96-263 (rel. December 24, 1996) ("*Notice*") at ¶¶ 50-53.

[2] *Notice* at ¶¶ 278-80.

circumstances truly warrant special accommodation. At a minimum, the Commission's new rules should apply to all Tier 1 LECs, whether or not they have chosen price cap regulation.

The purpose of regulation of rates is to protect consumers by reproducing, to the extent possible, the operation of a competitive market.[3] This is true whether the regulated firm is large or small, and whether it serves rural or urbanized areas. If reducing incumbent LEC access charges to a cost-based level is a good idea — which it is — it is a good idea everywhere. The Commission should be extremely reluctant to exempt ***any*** incumbent LEC monopolists from complying with this basic objective of regulation.

The *Notice* justifies its proposed limitation to price cap LECs by noting that such LECs represent "almost 91 percent of interstate access charge revenues and more than 92 percent of the total incumbent LEC access lines."[4] This observation, however, is hardly compelling: if access charge reform is a good thing, there is no reason to exclude any incumbent LEC revenues or access lines from its benefits without some other, independent reason for doing so.[5]

The other only justification advanced for limiting the application of access charge reform is that non-price-cap incumbent LECs are not likely to face competition in the near term:

> "The need for access reform is most immediate for those incumbent LECs that may soon be subject to competition from the availability of unbundled network elements. These are primarily the price cap incumbent LECs. Many, if not all, non-price-cap incumbent LECs may be exempt from, or eligible for a modification or suspension

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[3] *See Notice* at ¶ 220.

[4] *Notice* at ¶ 51 (footnotes omitted).

[5] To the extent that the Commission's real concern is that lower access charge revenues will undercut the ability of smaller LECs to offer service at affordable rates while remaining financially viable, that issue can and should be addressed in the ongoing Universal Service proceeding — the second in the Interconnection/Universal Service/Access Reform "trilogy" (*see Notice* at ¶ 1) — not this proceeding.

> of, the interconnection and unbundling requirements of the 1996 Act. By contrast, all incumbent LECs that are ineligible for Section 251(f) exemptions, suspensions, or modifications are incumbent price cap LECs."

*Notice* at ¶ 52 (footnotes omitted). This analysis, however, confuses likely with actual competition, and eligibility for potential Section 251(f) exemptions with actually having received such exemptions.

The *Notice* itself shows why the mere possibility of Section 251(f) exemptions cannot justify excluding non-price-cap incumbent LECs from access charge reform. As noted there, while "several incumbent price cap LECs may be eligible to request suspension or modification under Section 251(f)(2)," whether such suspensions or modifications are actually implemented depends upon the sound judgment of state regulators. *Notice* at ¶ 52 n.90. There is no reason to assume that all ILECs eligible for Section 251(f)(2) exemptions will seek them, nor to assume that state commissions will rubber-stamp any applications for such exemptions they might receive.[6]

Centennial is particularly attuned to this apparent lapse in the *Notice*'s logic because Centennial is already actively competing with PRTC — a Tier 1, non-price cap LEC which appears (by Centennial's estimate) to serve less than 2% of the nation's access lines. *See* Section 251(f)(2). It may be that PRTC will someday seek a Section 251(f)(2) suspension or modification of some of its Section 251 duties, but it has not yet done so, and Centennial will actively oppose any such request. In these circumstances, there is no logic to a rule which would exempt PRTC from transitioning to truly cost-based access rates (whether imposed by

[6] Nor would a blanket exemption for "rural telephone companies" make sense. Such entities are entitled to a temporary suspension of their Section 251(c) duties, but that exemption automatically expires after 120 days, and there is no reason to believe that state commissions generally will indefinitely extend such suspensions.

competitive forces or regulatory fiat[7]) simply because it might someday seek a 251(f) exemption that the Telecommunications Regulatory Board of Puerto Rico might someday grant (over Centennial's objection).

Moreover, as a result of some carefully choreographed regulatory footwork, PRTC has thus far managed to bootstrap an unreasonably high interstate access charge tariff into ***two*** different unreasonably high intra-island interconnection charges. PRTC started the process by filing interstate access charges that included, for example, an unreasonably high residual interconnection charge.[8] PRTC then established self-promulgated intra-island access charges[9]0 that were essentially identical to its unreasonably high interstate rates — including the equivalent of an "intra-island" RIC, even though this Commission had plainly indicated that the RIC was

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[7] *See Notice* at Sections IV, V, and VI.

[8] *See* In the Matter of Puerto Rico Telephone Company, FCC Tariff No. 1, Petition of Centennial Cellular Corp. to Suspend and Investigate or, in the Alternative, Reject (filed April 29, 1996). The Common Carrier Bureau concluded that PRTC's RIC was not sufficiently unreasonable to warrant investigation, In the Matter of 1996 Annual Access Tariff Filings; National Exchange Carrier Association Universal Service Fund and Lifeline Assistance Rates; NYNEX Telephone Company Petition to Advance the Effective date of the 5.3 X-Factor to January 1, 995, *Memorandum Opinion and Order,* 11 FCC Rcd 7564 (June 24, 1996) ("1996 Access Charge Order") at ¶¶ 84-93, but that was before the D.C. Circuit ruled in the *Comptel* case that the entire basis for the RIC was arbitrary and capricious. *See Comptel v. FCC,* 87 F.3d 522 (D.C. Cir. 1996) (released July 5, 1996). When PRTC filed its expanded interconnection tariff — of particular concern to Centennial's CLEC subsidiary, Lambda — Centennial challenged that filing as well, and the Common Carrier Bureau has suspended that tariff for investigation and possible refunds. In the Matter of Investigation of Puerto Rico Telephone Company's New Expanded Interconnection Offerings; Puerto Rico Telephone Company Revisions to F.C.C. Tariff No. 1, *Order,* 11 FCC Rcd 9407 (August 14, 1996).

[9] Until quite recently, PRTC — an arm of the government of Puerto Rico — essentially regulated itself, operating free from any normal regulatory requirements such as public filing of proposed tariffs, allowing comments or hearings before rate increases, etc. *See* In the Matter of Centennial Cellular Corp. and Lambda Communications, Inc., Petition for Preemption and Declaratory Ruling Regarding The Puerto Rico Telecommunications Act of 1996 (filed October 17, 1996). On December 16, 1996, a newly-constituted Telecommunications Regulatory Board assumed jurisdiction over PRTC's rates. As of today, however, the Board has neither a budget nor a staff to carry out its substantial duties under its own organic statute and the federal Telecommunications Act of 1996.

an ***interstate*** charge.[10] Finally, PRTC re-shuffled the rate elements of its intra-island access charge tariff to develop a proposed local interconnection charge (purportedly to comply with the requirements of Sections 251(b)(5) and 252(d)(2)(A)(ii) of the Telecommunications Act of 1996) that is within a few hundredths of a penny of its intra-island access charges — embedded costs, subsidy elements, and all.

In these circumstances, the existence of the current federal access charge regime — which the *Notice* recognizes to be "fundamentally inconsistent with ... competitive market conditions" (*Notice* at ¶ 6) — provides PRTC with regulatory "cover" for its efforts to thwart competition. Simply stated, the longer that PRTC is allowed to load its interstate access charges with uneconomic subsidies such as the RIC, and to base such access charges on economically irrelevant historical, embedded, accounting-based costs, the longer that PRTC will be able to claim that such charges are "just and reasonable," even when they form the basis for intra-island access charges (which should be based on intra-island costs) and for local interconnection rates (which should be based on incremental costs under the terms of Section 252(d)(2)(A)(ii).) Forcing PRTC to reduce its ***interstate*** access charges to economically rational levels, however — or even clearly indicating that PRTC will be forced to do so in due course — would go far towards preventing PRTC's anticompetitive regulatory and negotiating strategy.

For all of these reasons, the Commission should re-think the scope of its pro-competitive, market-based access charge reforms. It would be perfectly reasonable to extend those reforms to all incumbent LECs, with a waiver procedure for small, rural LECs modeled on Section 251(f). If the Commission believes that most small LECs would (for some reason not clear to Centennial) be able to justify a waiver, it might even be reasonable to limit the application of the new rules to non-rural LECs, until such time as a state commission has terminated a rural LEC's exemption from its Section 251(c) duties under the terms of Section 251(f)(1). But it makes no sense at all to exempt any large, Tier 1 LECs from access charge

[10] *See* 1996 Access Charge Order at ¶ 84.

reform, and it certainly makes no sense to exempt a large, Tier 1 LEC — such as PRTC — that already faces active competition from a CLEC.

### 3. The Commission Should Not Regulate CLEC Terminating Access Charges.

The *Notice* somewhat tentatively suggests that it might be appropriate in some circumstances to regulate the terminating access charges of CLECs.[11] The Commission notes, however, that it is "extremely reluctant to impose price regulation on non-dominant carrier services without a strong showing that such regulation is necessary."[12] For the reasons described below, that reluctance is well-founded in the case of CLEC terminating access charges.

It is certainly true in the abstract that an end user customer that has elected to use the services of a CLEC will (except for multi-line customers who split their business) be dependent on the CLEC to receive incoming calls. But it does not follow that the CLEC is free to set the rates for terminating access to such customers, irrespective of its costs or the realities of the broader switched access market in which it operates.

A CLEC that offers switched access services will by definition have at least one switch of its own. In the usual case, the CLEC's network will interconnect with the ILEC's network (directly or indirectly) at the ILEC's tandem, because this is the most straightforward way to ensure that traffic to or from the CLEC's network can connect to all of the ILEC's end offices. At least initially, the CLEC will also use the ILEC's tandem to route some or all long distance traffic between IXCs and the CLEC's customers. The reason is that most CLECs will not initially have enough traffic to justify establishing a direct connection to even the largest IXCs, and may not for some time have enough traffic to justify establishing such connections to smaller IXCs. In these circumstances, the ILEC and the CLEC will need to enter into

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[11] *See Notice* at ¶¶ 277-280.

[12] *Notice* at ¶ 278.

arrangements to jointly provide access service to some or all IXCs. Typically, the ILEC would be entitled to compensation for tandem switching and some transport, while the CLEC would be entitled to some transport, end office switching, and any common line charges.

The CLEC, however, has no interest in sharing access revenues with the ILEC if that can be avoided. Similarly, the CLEC has no interest in providing the ILEC with even a rough estimate of the amount of interexchange traffic the CLEC's customers are generating. In these circumstances, the CLEC will be highly motivated to establish direct connections with as many IXCs as possible, as soon as possible.

But the CLEC cannot force the IXCs to establish such direct connections. Particularly when the indirect route via the ILEC's tandem switch is already in place, the IXCs will only establish direct connections to the CLEC switch if the costs of doing so are reasonable. If the CLEC exactly mirrors the ILEC's access charges, that will only occur when the CLEC's traffic volumes would justify setting up a direct trunk to an ILEC end office (which, from the IXC's perspective, is what a CLEC switch subtending an ILEC tandem will generaly look like). The only way the CLEC can induce IXCs to establish such direct connections quickly, therefore, is by offering switched access service — including terminating access — at rates that are ***lower*** than those of the ILEC.

Moreover, it defies reason, and business reality, to conclude that any CLEC would be able to exploit alleged "monopoly power" in a "terminating access market" against the likes of AT&T and MCI, whose extraordinary size, knowledge of industry costs (including likely CLEC access costs), and bargaining experience provide ample means of resisting any such attempt at exploitation. Indeed, if these firms' public statements are to be believed, they will themselves ***be*** CLECs in most areas within a relatively short time, minimizing the potential exposure of their IXC divisions to any significant competitive abuse. In these circumstances, there is simply no real-world need to regulate CLEC terminating access rates.

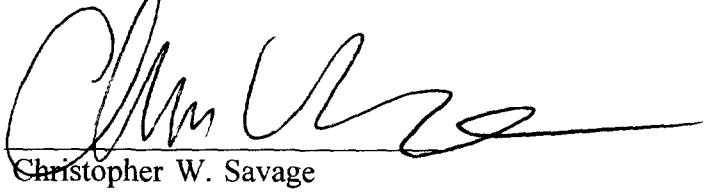
If, despite these considerations, the Commission remains concerned that an AT&T or an MCI might be exploited by a small CLEC, the Commission could simply remind the CLEC community that the Commission's policy of light-handed regulation of non-dominant carrier rates does not constitute an exemption from complaints under Section 208, and that the policy basis for imposing only light-handed regulation on such carriers in the first place is that market forces will adequately protect consumers. In order to deter frivolous or abusive complaints, however, the Commission should make clear (as suggested in the *Notice* at ¶ 280) that CLEC access rates equal to or below those of the ILEC serving a particular area will be conclusively presumed to be reasonable, since if CLEC access rates are below ILEC levels, the purpose of the Commission's policy of light-handed regulation will have been fully effectuated.

## 4. Conclusion.

For the reasons stated in Section 2 above, the Commission should extend its new, pro-competitive access charge regime to as broad a class of ILECs as possible, and certainly to all Tier 1 ILECs, whether or not they are subject to price cap regulation. Also, as explained in Section 3, the Commission should not impose price regulation on CLEC access charges.

Respectfully submitted,

**CENTENNIAL CELLULAR CORP.**

By: 

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